IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.777 OF 2005
IN
EXECUTION APPLICATION NO.486 OF 2003

M/s.Maha Rashtra Apex Corpn.Ltd. ..Petitioners.

V/s.

M/s.Enkay Texofoods Industries Ltd. & Ors. ..Defendants.

And

Mrs.Neeta T. Goyal. ..Applicant.

Mr.A.G.Bamne for decree holder.

Mr.Rajiv Narula with A. Das i/b R.Narula & Associate for applicant.

CORAM: A.M.KHANWILKAR,J

DATE : OCTOBER 25, 2005.

P.C. :

1. Heard Counsel for the parties. Perused the pleadings. By this chamber summons, the applicant, who is the third party and incidentally wife of Judgment Debtor No.2, prays that attachment in respect of flat No.19 admeasuring 800 sq.ft. on the 7th floor of the building known as Chowpati Uphar Co-operative Housing Society Ltd. situated at SIRI Road, Near Chowpaty Band Stand, C.S.No.392 Pt., Malabar Hill Division, Mumbai and articles lying in the said flat be raised and or removed. This relief

is sought on the assertion that originally the said flat belonged to Judgment debtor No.2 and 3 who in turn by Gift Deed dated 18th February, 1999 have transferred their right, title and interest therein in favour of the applicant. The applicant since then has acquired all the rights, title and interest in the said flat. It is stated that, on the basis of the said Gift Deed, request was made to the Society to transfer the shares in favour of the applicant. That request was made on 19th February, 1999. Society in turn has transferred the shares, on the basis of which flat was allotted to Judgment debtor No.2 and 3 by the society, on 13th March, 1999. According to the applicant therefore, Judgment debtor No.2 and 3 have no concern in the said flat for which reason, flat could not have been proceeded against, for execution of the decree against the Judgment debtor No.2 and 3. This is so because, applicant has exclusive rights, title and interest in the said flat and the applicant is neither Judgment debtor nor stood guarantor for and on behalf of the Judgment debtor No.2 and 3. On this basis, it is contended that the attachment on the said flat cannot be continued and the same will have to be lifted and set aside.

2. It is not in dispute that the gift deed referred to by the applicant dated 18th February, 1990, is not registered. If the Gift Deed which is the foundation for transfer of proprietory rights, title and interest pertaining to suit flat in favour of the applicant, is not registered; and in law, registration of the said document was necessary, it will have to be assumed that there is no legal transfer in favour of the applicant. I have had occasion to examine this question in the case of **Jetu Jacques Taru Lalvani V/s. Solestrap Industries Pvt.Ltd. & Ors. being Chamber Summons No.731 of 2005 decided on July 20, 2005 and in the case of Jetu Jacques Taru Lalvani V/s. Shreeji Mineral Water Pvt.Ltd. being Chamber Summons No.653 of 2005, which was decided on September 21, 2005.** Following the expositions in those decisions, I have no hesitation in rejecting the argument of the applicant.

3. To get over this position, the counsel for the applicant submits that transfer of shares held by any member of the society is movable property and transferable in the manner provided by law. In the present case, the shares held by the Judgment Debtor No.2 and 3 have been duly transferred in favour of the applicant. Counsel for the applicant relies on

the decision of the Apex Court in the case of **Hindustan Lever Employees' Union V/s Hindustan Lever Ltd. & Ors. reported in 1994-(SCZ)-GJX-0980-SC, in** particular paragraph No.49 thereof to contend that for transfer of shares in favour of the applicant, no registration under section 17 of the Registration Act was required. It is not possible to accept this submission.

4. Counsel for the applicant has also fairly pointed out the legal position stated in the decision in **Hanuman Vitamins Foods P.Ltd. & Ors. V/s. State of Maharashtra & Anr. reported in 1989(2) Bombay C.R.460,** which decision has been approved by the Apex Court in **2000(4) Bom. C.R.17.** The counsel has then referred to the decision of the Apex Court in the case of **Ramesh H.Shah V/s Harsukh Jadhavji Joshi reported in 1975-(SC2)-GJX-0177-SC.** Relying on the above decisions, the learned counsel would contend that transfer of shares do not require registration within the meaning of section 17 of the Act. I have indicated the reasons why such contention cannot be accepted in my unreported decisions referred to above. If the transfer of shares is founded on Gift Deed which is not a registered document, such transfer will have to be discarded as nonest as no

right is created in favour of the applicant by virtue of the Gift Deed which is an un-registered document as it was required to be registered by Section 17 of the Registration Act. In my opinion, therefore, the present chamber summons ought to fail.

5. Counsel for the applicant however contends that in the fact situation of the present case the unreported decisions on the point referred to above, will be inapplicable. He submits that in the present case, before the warrant of attachment was issued, the applicant has created mortgage in favour of the Indian Overseas Bank in respect of disputed premises and has availed loan facilities on that basis. Besides, the applicant has executed necessary documents in favour of the Indian Overseas Bank for creating mortgage and authorising the bank to deal with the said property in the specified situation. This argument does not commend to me. The fact remains that the applicant has not acquired any title on account of the stated Gift deed dated 18th February, 1999. The act of the Society of transfering the shares in favour of the applicant will be of no avail. This is so because, in law, there is no transfer in favour of the applicant. Viewed in this perspective, applicant out to fail.

Hence this application is dismissed.

6. At this stage, counsel for the applicant prays that the applicant be protected for some time to enable the applicant to take up the matter in appeal. As the request is reasonable one, I am inclined to accede to this request by giving direction that no precipitative steps be taken for a period of 6 weeks from today.